



HR Bulletin

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Trade Union Bill

The Trade Union Bill proposes the biggest changes in the law relating to trade unions and industrial action for almost 30 years. The Government has claimed that the aim of these changes is to establish a fair balance between employers and employees. The trade unions see them in a very different light and have said that the restrictions now proposed are unfair and will make industrial action almost impossible.

The Trade Union Bill is now nearing the end of its passage through Parliament. The Bill makes it harder for trade unions to take industrial action and tightens the regulatory framework under which they operate. There is a danger however that the Government's zeal for inconveniencing trade unions will have a negative influence on the industrial relations climate – particularly in the public sector. Almost at the last minute, however, the Government has proposed some amendments that all sides should regard as helpful – it has also had some amendments thrust upon it and will have to decide how to respond.

The key amendments proposed by the Government relate to the timing of industrial action and the conduct of ballots. The Bill originally provided that following an industrial action ballot a union would have just four months to take industrial action before being required to ballot its membership all over again. The problem with this was that it could actually increase the amount of industrial action taken as unions would be unlikely to be persuaded to postpone action while talks took place – they would be suspicious that the employer was just trying to play for time and run down the clock.

Indeed, given the expense of re-balloting the union would have an incentive to hit the employer as hard as possible in those four months in the hope of forcing concessions without having to re-ballot.

The Government has therefore proposed that the four month period should be extended to six months with the possibility of the employer and the union agreeing an extension to nine months. This is very welcome, as it will make it much easier for unions to postpone action when it appears that progress may be made in negotiations.

A more obscure change – but actually almost as important – is being proposed to the wording of the industrial action ballot paper. The Bill originally required the voting paper to set out a 'reasonably detailed indication' of the matters in dispute. The trouble was that no-one really knew what that meant. Some trade disputes can be complicated and it was feared that unions would need to write lengthy explanations of the points in issue in order to satisfy this requirement.

The Government amendment replaces 'a reasonably detailed indication' with 'a summary', which suggests that only a very brief explanation is needed. It's a sensible change – but this is still going to be a difficult area. Employers may well challenge the legality of a ballot if they feel that the union's summary is not a fair reflection of the dispute and there remains the question of what happens if progress in negotiations means that the areas of the dispute are narrowed – can the union still rely on a ballot if the initial summary of the dispute on the ballot paper is no longer accurate?

Despite these positive changes, my key frustration with the Bill remains the fact that the Government is so keen to make things uncomfortable for trade unions that it ignores the importance of good and constructive industrial relations. It also interferes in areas where you might have thought that employers would know best whether or not there is a problem. For example, the Bill prohibits public sector employers from operating a check-off system under which the employer agrees to collect union subscriptions by making a deduction from an employee's wages. It is certainly a rather old fashioned system – having its origins in the days when employees were paid in cash and long before direct debits were a reality for most people. However employers are not obliged to operate check-off and employees are fully entitled to opt out. Many local authorities charge the union for collecting subscriptions in this way and, of course, the extent of check-off gives a good objective measure of the size of the union's membership. And yet the Government seems determined that it should end.

But perhaps the biggest headache the Bill gives local government employers relates to facility time. Until the Lords got hold of it the Bill contained reserve powers for limiting the amount of facility time that public sector employers can grant. That has now been removed from the Bill – but may well be put back again when the Bill returns to the Commons. What remains however is inconvenient enough. Regulations will be introduced requiring public bodies to publish data on the amount of facility time they grant and how it is used.

Many local authorities will already be transparent about the amount of paid time off given to trade union officials. But Regulations issued under the Trade Union Bill are likely to require far more detail about how facility time is spent. Employers will have to publish 5 key pieces of information:

- The number of employees who are trade union officials
- The total amount spent by an employer on paying union officials for facility time
- The percentage of the employer's total pay bill that that figure represents
- A breakdown of how the facility time granted by the employer was used (for example - how much of it was spent representing employees in grievance hearings and how much preparing for pay negotiations)
- Information about the facilities granted by the employer for the unions use in relation to facility time.

The Government is clearly of the view that giving trade union officials paid time off to perform their duties amounts to a public subsidy of the trade union movement. There seems to be little acknowledgment that a lot of the time off granted helps both sides get things done. Time spent meeting union officials to discuss important workplace issues is not just to the benefit of the union – and collective bargaining will be more constructive and productive if the union side has been given a proper opportunity to prepare and consult with their membership. What is more, a significant part of union facility time is taken up allowing union officials to accompany employees at disciplinary and grievance hearings. It is clearly in everyone's interests that these hearings can take place promptly - and the prospect of the Government – assuming the Lords' amendment is overturned - eventually limiting how much time off can be granted to union officials raises all sorts of problems.

Facility time is something agreed between the employer and the union and reflects the local industrial relations context. It does seem rather odd that the Government, while emphasising the importance of cutting red tape in other areas, seems keen to impose this extra bureaucratic burden on the public sector.

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WME Comment

We recently received an enquiry about reliance on a ballot conducted by NASUWT in 2011, to support ongoing discontinuous action extending through to 2016. The school in question felt that the ballot was no longer relevant as so much had changed over the 5 years including staff that may not be in agreement with the action. Our advice was that under current legislation, statutory guidance and case law, yes, the action would remain legitimate. This was due to the specific circumstances in that the dispute remained live (and essentially the same in its nature) and the action had not been expressly ceased during the intervening period. Difficult to reconcile, but so be it.

This anticipates a further question i.e. could the union still rely on this ballot after the introduction of the provision in the current Trade Union Bill? Yes, this is so as Section 8(2) of the Bill provides that existing industrial action based on ballots that have already taken place are not affected by the new rules. Equally, we can yet see no changes which would apply tighter constraints on the length of discontinuous action, although of course, achieving the high ballot thresholds will itself be a challenge.



Executive Pay – A view from the ‘stands’?

Recent research outlined the spiraling pay for Chief Executive roles within leading private sector businesses. A prominent think tank pointed out that it would take the CEO's of FTSE 100 companies just 22 hours of 2016 to earn the UK average salary! The higher demand for pay is on the increase according to current trends outlined by the London School of Economics (LSE). Unfortunately, according to a recent article in Executive Grapevine suggests that does not mean that the quality of CEO's appointed matches these exorbitant figures (see http://www.executive-grapevine.com/board-leadership/article/2016-03-07-ftse-100-ceos-are-mediocre-with-absurdly-high-pay?utm_source=eshot&utm_medium=email&utm_campaign=BL-07/03/2016).

Research by LSE and the think tank points out the negative impact this disequilibrium has on the social fabric of the country and the general distribution of wealth ratio.

Recent local news reports brought the issue of Executive Pay back in the spotlight with the example of Aston Villa's highest paid Director, presumed to be the CEO Tom Fox, who earned £1.25 million in the last financial year. Focusing on value for money; it is usual for Tom to work long 12 hour days' and with just one 10 day holiday per year. However, it would be interesting to identify and compare the 'pay ratio' down at Villa Park to the 'norm' in local government, especially in a season of doom and gloom, impending relegation and a £27.3m loss for the year ending May 2015.

Comparing this to the public sector; one might observe that the (fantastic?) Mr. Fox received a salary approximately seven times that of the Chief Executive of Birmingham City Council and of course we have heard many times that no-one in the public sector should be earning a higher wage than the £142,500 of the Prime Minister. For the record, as the biggest local authority in the UK and also the largest unitary authority in Europe, Birmingham has a £3.7 billion annual revenue expenditure, serving over one million residents, with a staffing compliment of over 10,000, whilst facing a multitude of changes from fundamental public service reform; a myriad of legislative developments and year on year cuts to funding

Which job would you opt for? Interestingly the Prime Minister is allegedly an Aston Villa fan..... or was it West Ham?





The Local Authority Challenge – do you have what it takes to be a winner (or a volunteer)? 22nd September 2016 at Villa Park

LA Challenge is a team competition in which authorities across the region can pit their skills against each other for the chance to be crowned Best Team - experiencing the challenges facing the sector through scenario role play. Organisations put forward teams of six participants to spend the day acting as the Management Team of a fictional local authority, encountering many of the challenges and issues that face a real corporate team.

There are 5 award categories up for grabs but only one team will be crowned overall LA Challenge Winners 2016. To win, teams will have to work with neighbouring councils, stakeholders and partners to deliver a new strategy for their council. They'll have to identify which areas to prioritise, deal with politically sensitive issues and maintain customer focus when determining how to provide the public with the best services possible despite limited resources.

The LA Challenge has developed a strong reputation in terms of quality and engagement. In true WME style we are planning to spice things up a little and put our own stamp on what is going to be an exciting and action packed learning experience. Win or lose, participants will definitely benefit from the experience and return to work reenergised!

Your WME needs you!

To add to the realism and challenge of this simulation exercise we need a range of volunteers to act as stakeholders and potential partners to meet with competing teams. We need people with local government/public sector experience who know how to fill these roles.

Volunteers are critical to the success of the event – ensuring that competitors are able to practice, and demonstrate a range of skills! You could be playing the role of a CEO of a large company one minute and a local resident or Police commissioner the next! WME staff have been volunteers at an LA Challenge event in another region and thoroughly enjoyed the experience!

- Want to be a **volunteer** – email hub@wmemployers.org.uk
- Want to **find out more or book** a team place - email m.douglas@wmemployers.org.uk

